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February 25, 2005

VIA FACSIMILE (509) 338-3282

Mark D. Workman
City of Pullman
Public Works and Planning Departments
325 S.E. Paradise Street
Pullman, WA 99163

Re: Pullman Alliance for Responsible Development v. Wal-Mart

Dear Mr. Workman:

This office represents the Pullman Alliance for Responsible Development ("PARD"), a nonprofit organization. The members of PARD have serious concerns about the Wal-Mart Supercenter that is proposed for development in Pullman. My client has instructed me to contact you regarding some of their concerns regarding this proposed project, with both procedural questions and substantive concerns.

Procedural Matters

With respect to the procedures utilized in reviewing the Wal-Mart proposal, on behalf of PARD I would request feedback from the City on the following matters.

- A. Completion of Steps by Applicant. Please advise what (1) steps in the review process have not been completed; (2) what information, studies, or other documentation the City is awaiting from the applicant.

- B. Decision Timeline of City. Please advise of an anticipated timeline of a decision on the site plan and threshold decision under SEPA.

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- C. Wetlands Review. Is the city still awaiting a confirmation of the absence of jurisdictional wetlands by the U.S. Army Corp. of Engineers? When does the city anticipate receipt of that documentation or information?
- D. Traffic Review. Is the city awaiting further comments from the applicant, in response to the review and analysis of the City's consultant, Mr. Brown. Or, in the alternative, is the City going to make a decision without further feedback from the applicant regarding Mr. Brown's analysis?
- E. Appeal Process. With respect to procedural matters, PARD requests clarification of the appeal process that has been described by the City of Pullman. In Ms. McAloon's memorandum dated January 21, 2005, it is very clearly stated that this matter is not subject to review by the City Council. However, the City's environmental ordinance contains apparently contrary language, stating as follows:

...when any proposal or action not requiring a decision of the City Council is conditioned or denied on the basis of SEPA by a nonelected official, **the decision shall be appealable to the City Council**. Such appeal may be perfected by the proponent or an aggrieved party by giving notice to the responsible official within ten days of the decision being appealed. **Review by the City Council shall be on a de novo basis.**

RCW 16.39.160(5) (emphasis added).

By our review, this provision is clearly intended to apply to the Wal-Mart application, which is a decision that is not subject to initial administrative review by the City Council, and is made by a nonelected, administrative official of the City. PARD requests an administrative interpretation or determination of the meaning and application, if any, of the above language to this case.

Initial Comments on Merits

A. Mitigation Measures.

It is my understanding that the City of Pullman is a "code city" (see PCC 17.01.020) that does not plan under the Growth Management Act, RCW 36.70A. (See Comp. Plan, Ch. 1) Even though Pullman is not required to plan in manner described in the Act, the GMA still mandated that Pullman's comprehensive plan would serve as the mandatory guideline for Pullman's development regulations. See RCW 35A.63.105 (stating that development regulations shall be consistent with the comprehensive plan beginning July 1, 1992).

From the records reviewed thus far, it appears that the mitigation measures proposed for the Wal-Mart project have not been stated or announced. While we know that the City is considering

numerous details on this project, it is unclear to PARD, for purposes of public consideration or comment, what mitigation measures are being proposed by the applicant and the City.

Transportation impact is a primary concern as an extended example. The Comprehensive Plan adopted in 1999 provides, for example, as follows:

Impacts on streets should be considered whenever new development is proposed. To the greatest extent possible, the costs associated with these impacts should be borne by the new development.

(See Comp. Plan, Ch. 7 (emphasis added)) The Pullman City Code provides specific authorization for transportation improvements when justified by the traffic generated by a proposal. See PCC 17.135.080(4)(a) & (h) (providing that a proposal may be conditioned upon on-site improvements, dedications, and off-site transportation improvements when warranted by the traffic generated). The State Environmental Policy Act provides further justification for such mitigation. The Pullman City Code provides, based upon SEPA, that the City may attach conditions to a permit or approval so long as those conditions are necessary to mitigate the probable, environmental impacts of a proposal. See PCC 16.39.155(2). This clearly includes impacts from traffic.

Please note that PARD has enlisted its own traffic engineer to review the traffic analysis submitted by Wal-Mart, and to provide comments supplemental to those made by the City's consultant, Mr. Brown. In addition, the traffic engineer enlisted by PARD will be visiting Pullman in furtherance of his review of the matter, to our understanding, on February 25, 2005. With his assistance, PARD will be providing further, specific comments regarding the traffic concerns and impacts.

The members of PARD request the opportunity to comment upon proposed mitigation measures as those options are being proposed, formulated or considered by the City of Pullman. It is our concern, given the apparent lack of a public form for the discussion of these issues, that the mitigation measures proposed will only become clear once the City has already made its decision on the permit application.

Please advise us of the following:

1. The specific mitigation measures that have been offered by the developer for this project;
2. The specific mitigation measures that the City of Pullman is considering or will impose upon the permit (if issued); and

3. What comment period, if any, will be provided with respect to the specific mitigation measures under consideration, before the City makes a final decision on the site plan/permit application.

The members of PARD request the opportunity to review the specific mitigation measures in order to formulate a specific response or comment to any such proposals.

B. Fiscal Impacts.

The Site Plan Review provisions of the city code provide, in relevant part, that the "...SRPC and director or the board on appeal or referral **shall base its review, findings, and decision on the following: ...the fiscal impact of the proposed development on the city.**" PCC 17.135.070(11) (emphasis added). By our review of the record to date, there has not been a fiscal impact analysis performed by the City, as required by the city code.

Despite the above language, it is my understanding that the city has concluded that no such analysis is necessary. For example, in the memorandum to the city supervisor, dated January 21, 2005, the city attorney cites West 514 v. Spokane County to argue that the City of Pullman cannot consider the fiscal impacts of the Wal-Mart application as part of the site plan review process. I respectfully submit that this conclusion is incorrect.

First, the Pullman City Code specifically mandates that the city "shall base its review" upon a list of factors, including the "fiscal impact of the development" on the city. By utilizing mandatory language, the Pullman City Code would appear to provide no alternative other than to perform some type of reasonable fiscal impact analysis.

Second, a permit decision must consider fiscal impacts as a mandate of site plan review, separate and apart from the requirements of SEPA. The language of PCC 17.135.070(11) does not state that "fiscal impacts" are defined to mean only environmental impacts. Even if no SEPA review were required (hypothetically speaking), the site plan process would still require analysis of fiscal impacts.

Third, SEPA provides independent justification for conducting a fiscal impact analysis, and the decision in West 514 supports this conclusion. The Court of Appeals in West 514 held that "...economic competition, in and of itself, is not an environmental effect..." West 514, 53 Wn. App. At 847. The court did not state that the issue of fiscal impacts can never be considered in reviewing a permit application. Rather, the court concluded, given the facts of the case, that proof of the impacts was lacking. The court stated: "What's missing here is evidence that the proposed mall is likely to have a significant adverse impact on the *physical* environment of downtown Spokane. While loss of retail sales and resulting blight is a possibility, West 514 did not establish the probability or likelihood of this occurring in Spokane." Id., at 847 (italics in original). In other words, "general predictions" of possible impacts are not enough to condition

or deny a development proposal. However, in adopting this reasoning, the court also recognized "...that if *probable* effect of competition is downtown blight such that the built environment is affected...", then those impacts must be addressed in the SEPA review. Id., at 847-48.

Given the foregoing, on behalf of PARD, I would request or suggest the following:

1. That the City provide PARD with its written, fiscal impact analysis, if any exists. No representative of PARD has seen any such report or analysis.
2. That the City, in accordance with the requirements of PCC 17.135.070(11), conduct a fiscal impact analysis for the Wal-Mart project, and produce a report for public review and comment, before any decision is made on the project. Given the lack of a public hearing process, the only opportunity for public input on fiscal impacts would be through comment upon a city-generated report, with a reasonable time for review and comment.
3. In the event that the City will not be completing a fiscal impact analysis, that the City impose a condition upon the applicant to generate a fiscal impact analysis for review and comment by the public, before any decision is made upon the application.
4. PARD contends that the burden of completing a fiscal impact analysis lies squarely with the City under PCC 17.135.070(11), and with the applicant, whose project will be the source of any fiscal impacts visited upon the city. It is not reasonable to place such a burden upon the limited resources of members of the public who object to all or portions of the Wal-Mart project. Assuming hypothetically that the City will neither conduct nor require a fiscal impact study, PARD requests that the City advise us whether the City would consider setting timeline for PARD or others to conduct a fiscal impact study and submit it for consideration prior to the decision on this project. Without specific guidelines, and a time frame for completion, members of the public could not expect to devote resources to a study that may be entirely ignored because the City proceeds with a decision while the study is being conducted.

Mark D. Workman
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Conclusion

Thank you for your considered attention to these comments. I look forward to receiving feedback and guidance from the City on the matters addressed in this letter. In the meantime, if you have any questions, please contact me or ask Ms. McAloon to contact me to discuss these matters further.

Very truly yours,



BRIAN T. MCGINN

cc: TV Reed (via electronic mail)
Laura McAloon (via facsimile 838-0007)

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